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The Urgent Medical Interview and Report

By MOE LEVINE*

INTRODUCTION

There have been many articles written regarding the technical details of the preparation of an expert medical witness for testimony. However, there is an area that remains relatively unexplored and is, in fact, probably the basic prerequisite for the proper medical preparation of any case. That is the area of initial contact with a medical expert when time and the obtaining of a report is of the essence. This particular area is what will be taken under discussion in this article. The following are the most important aspects involved in this area of medical legal jurisprudence:

- 1) Obtaining the appointment under the extreme pressure of a time schedule;
- 2) Making the most of the appointment in the briefest period of time allotted;
- 3) The expert's written report.

HOW TO OBTAIN AN URGENT MEDICAL INTERVIEW

In making the appointment in the first instance, the most important person in this area is the doctor's secretary. Most important appointments are lost or "unattainable" because of the failure to get beyond the doctor's personal secretary or nurse. This is understandable since, with many medical experts the

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efficient secretary is there solely for the purpose of keeping the doctor's schedule free from non-medical interference. If you realize that the doctor's secretary is not necessarily your enemy or an obstacle in your way but rather a splendid and efficient guardian of the doctor's available time, you will have developed the proper psychological approach necessary for a meeting of minds between yourself and the secretary. For this purpose, in the first instance, you should never be demanding or in a position where you are attempting to impress the secretary or nurse with your own particular time problem, but rather you should approach the situation with an understanding of the doctor's and secretary's prior commitments. Toward this end the proper approach is to explain the reason for the urgent nature of your call for an appointment and to relate the vagaries of trial practice. You must at the very outset recognize and apologize for the imposition upon the doctor for his most valuable time with an injection of the very legitimate concern for his patient, who is also your client, and the ultimate justice in the case. Once this has been done, it becomes incumbent to outline to the secretary a schedule that would allow the doctor to meet with you with the least inconvenience to him. For this purpose the following outline is suggested: a) Make yourself available to the doctor at *his* convenience at anytime in a 24-hour day if the doctor's schedule is chronologically heavy, that is, if he is booked for patients and with hospital commitments. Pick the following areas of his day that may be conducive to his meeting with you and which lend themselves most resistant to a negative reply for an appointment: 1) Tell the doctor's secretary that you will meet with him just prior to the start of his appointments no matter how early that be in any given day; 2) offer to meet with him during his lunch period explaining that your interview could take place over "lunch and a cup of coffee" in the doctor's office, if necessary; 3) if the doctor's day is committed to hospital rounds, offer to make yourself available at the hospital, either before, after, or during the period of such rounds. You can explain this by suggesting that if there is a break in the doctor's activities during any of this period you would be available to discuss any matter you have with him; and 4) if the doctor has indicated that he will be en-route from one area to another, for instance, from his office to the

hospital or vice versa, then you can suggest that if he would allow you to accompany him the case could be discussed in the car enroute to any of his appointments or commitments.

HOW TO HANDLE THE APPOINTMENT

A prerequisite to a successful interview is an absolute understanding of your case, proper and adequate photostats, copies of whatever hospital or medical records are necessary for a presentation of your medical problem to the doctor. It becomes manifestly apparent that obtaining the interview is to no avail if your presentation to the doctor cannot be done in a precise, efficient and knowledgeable manner. The following prerequisite preparation is suggested:

- 1) Photostat duplicate copies of any and all hospital and medical records so that if necessary you can then leave them with the doctor without stripping your own file of necessary material.

- 2) Prepare yourself medically for the problem that exists so that you can present it to the doctor in a factual and concise manner without attempting to impress him with your knowledge of medicine and law. The doctor must understand that you are there to learn and not to demand.

- 3) Be prepared with a proposed medical statement that will not appear presumptuous but rather will appear to have been drawn for the purpose of facilitating the medical legal necessity in your case. This statement, in essence, should be nothing more than a chronology of events, medical positions, findings, diagnosis and prognosis. A proper interview with a doctor, no matter how busy he may be, can be presented in a matter of fifteen minutes if you are properly prepared and oriented.

The following are a few examples of the above picture and how it might work out. In one instance, one of the foremost neurological surgeons in the country consented, under the circumstances above described, to a fifteen minute interview for the presentation of a very complicated medical malpractice case. With proper preparation and personal presentation it took approximately ten minutes to present the background material, the specific medical problem and the medical opinion being sought.

It then took this eminent neurosurgeon not more than five minutes to tear this medical presentation apart; but because of the interest aroused in the initial presentation, he allowed additional time for a rebuttal of his position if it could be done. This was, in fact, accomplished by a legitimate questioning of his position and citing of literature to which he had contributed, and thereupon the original fifteen minutes for an interview was extended to one hour and three-quarters with a medical meeting of the minds and the rendering of a favorable report. The point being made is that without the proper presentation the initial interview would not have gone beyond ten minutes. The most important factor in dealing with a medical expert is to get down to the basic fundamental facts of your case, both positive and negative. Emphasis should be placed on not withholding a negative aspect of your case. An attempt to delude a medical expert is probably the most foolhardy thing any attorney could possibly attempt, your case, in fact, is bolstered by a thorough discussion of the negative aspects. If you are not prepared for what may appear to be the "flaw" in your medical case, then you find yourself at a complete loss, without answer, when such a negative aspect is brought to your attention by the medical expert with whom you are consulting. He cannot help but be impressed and moved toward your position when you are the one who recognizes such a "flaw" and suggests a valid medical answer to the same.

THE MEDICAL REPORT

The medical report to be obtained is an opinion that in essence will present your case with brevity, clarity and medical validity, while at the same time encompass the diagnosis and prognosis. Where necessary, it may also establish the proximate or competent producing cause of your client's disability in relationship to the traumatic incident involved. There is nothing wrong, especially where time is of the essence, with a report being concise and to the point. In fact, under the circumstances of urgency for time, it is the only report you can expect to obtain. *You should not leave the doctor's office without such a report.* If you do, the interview is not worth the effort. I have discussed above the necessity of having a proper chronological memorandum of your

case. The following are the essential medical ingredients of such memorandum that will be the basis for the eventual report:

- 1) A history of the plaintiff's prior condition, referring only to the freedom from symptoms in the area involved in your case.

- 2) A very brief medical outline of the chronological events resulting from the trauma, *i.e.*, (a) nature of injury; (b) hospital confinement, if any; (c) neurological or orthopedic positive findings and sequelae; (d) diagnosis regarding permanency; and (e) prognosis. In this area it is important to note that in discussing the report with the doctor the original injury is not as important to you as the prognosis, since in the field of personal injury the recovery is based upon pain, suffering and continuing disability. Therefore, a Colles fracture involving the radius and ulna with the application of a cast for approximately six to eight weeks represents a disability wherein the prognosis may not be as severe as a legitimate whiplash injury of the cervical spine with nerve root compression and cervical radiculitis. The prognosis in an uncomplicated Colles fracture is almost always good, if not excellent. After the removal of the cast you may have some disuse atrophy, but eventually the healing process is almost always good, and the functional use of the extremity almost always returns to normal. On the other hand, although there may not have been fracture involved, the above described injury to the cervical spine can result in the necessity for wearing a cervical collar, intensive physiotherapeutic care and treatment, and cervical traction. There the prognosis must remain guarded.

Another example of exploring the result of the original injury can be found in a fracture of the distal third of the tibia. In most instances the doctor who is preoccupied with the original injury that he treated, and who is not aware of the medical-legal aspects of your case, will render a report that will simply state, "fracture, distal third tibia." Your case, however, involves itself with pain, suffering and disability. For this purpose in discussing the doctor's report one must forget the original injury as severe as it may seem and concentrate on the effect of this injury on the adjacent area. In this type of fracture the doctor should be made aware of the fact that you are concerned with whether or not there is bowing of the tibia and atrophy at the fracture site. This is almost always found in this area since the tibia is the weight bear-

ing bone of the body. All of the weight of the upper torso has settled into the pelvis and is distributed over a line running down both femurs with a line extending directly over the patella in line with the patella tendon, and eventually all of the weight is borne by both tibias. For this reason a fracture of the distal end of the tibia will almost always have the fracture line extending into the ankle mortise. This in turn can create irregularity and pitting and osteoporosis of the ankle mortise which results in pain and swelling not only of the fracture site but in the area of the ankle. Prior to his report the doctor can and should be questioned as to the effect of this condition on the ankle mortise. A persistence of pain in this area can result in a prognosis that goes beyond the original fractured tibia and produces the necessity of surgery for fusion of the ankle joint to prevent the recurrence of pain. This in itself establishes a vicious cycle. Although pain may have been relieved in the ankle joint, the mobility of such joint has now been lost. It is, therefore, apparent that the prognosis in a doctor's report that includes the effect on the adjacent areas as above described becomes an important adjunct to your case and should not be left out of a medical report.

SUMMARY

The sum total of the ingredients of a successful medical interview under urgent and extreme time limitations is the obtaining of the interview, the success of the interview, and the obtaining of a proper all-encompassing medical report. It is to be stated again that the interview is not successful unless the report is obtained at the end of the interview.